

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7875 of 1997

MANISHBHAI RAMESHBHAI SOLANKI

Versus

NADIAD MUNICIPALITY

Appearance:

None present for Petitioners

MR YV SHAH for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Order: 04/02/98

C.A.V. ORDER

Heard the learned counsel for the respondent and
perused the special civil application.

2. Under the order annexure 'A' dated 7-5-1997, the services of the petitioners were brought to an end by the respondent and this petition has been filed by the petitioners before this Court on 21st October, 1997.

3. The petitioners have come up with a case that this Court in the special civil applications No.3909/97 and 4610/97 decided on 5-8-1997 held the termination of the services of the petitioners therein as illegal as the services of the junior persons to the petitioners were retained and their case is also squarely covered by that decision. That decision is clearly distinguishable on the ground that in that decision, the counsel who was appearing for the respondent has admitted as a fact that the employee junior to the petitioners therein are continuing in service. However, in this special civil application there is no such admission by the counsel for the respondent.

4. Otherwise also, the petitioners (except petitioner No.1) have not felt aggrieved of their termination, which is proved from the fact that immediately after the termination of their services they have not come up before this Court. However, one of the petitioners, Manishbhai Rameshbhai Solanki, the petitioner No.1 felt aggrieved of the termination of his services and he raised an industrial dispute, which is

pending for adjudication. The other petitioners have not raised the industrial dispute also. Only when this Court has decided, the idea appears to have come and they have felt aggrieved of their termination, which is nothing but only an after thought. Even other petitioners have not joined the petitioner No.1 in the industrial dispute. Moreover, I do not find any seniority list produced by the petitioners on the record. In Ground-D, the petitioners have stated that as per their information, the persons named therein are junior to them and they are continuing in employment but no material has been produced on the record and it is also not the case that they have been appointed only on daily wages without selection and they are continuing. What is the source of information has also not been disclosed by the petitioners in the affidavit. Ground-D is part of para-10. In the affidavit, the petitioners have not verified the contents of para-10 as nothing has been stated in the affidavit by the petitioners.

5. Moreover, this petition is nothing but only a parallel remedy availed of by the petitioner No.1. The petitioner No.1 has already raised an industrial dispute and he filed this petition though he joined other persons as party. He is the only author of the affidavit and none of the other petitioners have filed any affidavit. This petition on behalf of the petitioner No.1 is otherwise also not maintainable on the ground that he cannot availed two parallel remedies. The other petitioners also should have raised an industrial dispute before approaching to this Court. When the petitioners are complaining of contravention of the provisions of the Industrial Disputes Act, 1947 in the matter of termination of their services then the proper course would have been only to approach the Labour Court.

6. Mr. Justice B.N. Kirpal, Chief Justice of this Court, (as he then was) speaking for the Division Bench in the case of Mukesh B. Desai vs. State of Gujarat and Ors. reported in 1997 (3) GCD 645 held that the principle - last come first go would apply in the cases of retrenchment, which is a basic principle of labour law and as such, appropriate remedy in such matters is only to raise an industrial dispute and not to approach this Court under Article 226 of the Constitution. In fact, the petitioner No.1 has raised an industrial dispute, and he joining the other petitioners has filed this petition, which may also be an example of the abuse of the process of this Court.

7. Taking into consideration the totality of the

facts of this case, this petition is wholly misconceived
and the same is dismissed.

(S.K. Keshote,J)